TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 199.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS, THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, AND JOHN FITZPATRICK, STATE TAX COLLECTOR, &c.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED FEBRUARY 5, 1906.

(20,085.)

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK, Plaintiffs in Error,
versus
BOARD OF ASSESSORS ET ALS., Defendants in Error.

Howe, Spencer & Cocke, for Plaintiffs in Error.
H. G. Dupre, Esq., for City of New Orleans, Defendant in Error.
George H. Terriberry, Esq., for Board of Assessors, Defendant in Error.
F. C. Zacharie, Esq., for John Fitzpatrick State Tax Collector, Defendant in Error.

Writ of Error to the Supreme Court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C. within thirty days (30) from the thirteenth day of January, A. D. 1906.

Transcript of Record.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

Petition.

Filed August 27th, 1904.

Civil District Court, Parish of Orleans, Division "C."

No. 74248.

METROPOLITAN LIFE INS. CO. OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

To the Honorable the Judges of the Civil District Court, for the Parish of Orleans:

The petition of the Metropolitan Life Insurance Company of New York, a corporation created by and existing under the laws of the State of New York, and domiciled in the City of New York, said State, herein appearing through George G. McHardy, its duly authorized Agent in the City of New Orleans, with respect, represents;

That your petitioner is a corporation engaged in the business of life insurance in various portions of the United States, and its domicile and principal place of business is in the City of New York, State of New York, where its general or home offices are located, and its officials reside; that it has an office in the City of New Orleans, where it is represented by subordinate managers only; that, in accordance with law, in the month of January, 1904, to-wit:—on or about the 21st day of January, 1904, it duly filed, with the Board of Assessors for the Parish of Orleans, its sworn statement of all the property owned by it subject to taxation under the laws of this State.

That, notwithstanding the fact that petitioner had made
2 true return of its taxable property to the said Board of Assessors, said Board did, nevertheless, proceed to, and did assess your petitioner upon property not owned or held by it or any of its officers in the State of Louisiana; and said Board, *and said Board*, despite the due and seasonable protest of your petitioner, did make an erroneous, illegal and void assessment on the following to-wit: $10000.00 credit, money loaned, etc. $10000.00 money in possession, etc.

Your petitioner avers that it did not have at any time during the current year, on hand or on deposit, within the State of Louisiana, funds exceeding the sum of $1500.00, as set forth in its sworn return.

Petitioner avers that the assessment in the sum of $10000.00 made by said Board on account of credits, money loaned, etc. was illegal, null and void for the reason that any credits, bills receivable, or monies loaned by and due petitioner are not located and payable in this State, but are located and payable and taxable only at the domicile of your petitioner; and are not subject, under the Constitution of the United States and the law of this State, to taxation by the State of Louisiana; and that said assessment by the Board of Assessors was an attempt to extend the taxing power of the State of Louisiana beyond the territorial jurisdiction thereof and constitutes a taking of property without due process of law, in violation of the 14th Article of Amendment of the Constitution of the United States, which this petitioner expressly pleads and claims the benefit of.

That, in accordance with the statutes made and provided, petitioner duly and seasonably applied to said Board of Assessors and to the Revision Committee of the City Counsel for the cancelation of said illegal assessment, and for reduction of said assessment of money on hand to the amount returned, under oath, by this petitioner to the Board of Assessors; that the said Board of Assessors, upon application, reduced the said amount of $10000.00 assessed to your petitioner as money in possession, to the sum of $7500.00
3 instead of to $1500.00 as prayed; but persisted in assessing your petitioner with the sum of $10000.00 for credits, bills receivable, etc.

That your petitioner thereupon made a legal tender of the sum of $46.00 to the Treasurer of the City of New Orleans, being in full of the amount of taxes legally due by it for the current year, which tender was refused.

Petitioner further avers that it has been notified by the said

Treasurer and by John Fitzpatrick, State Tax Collector for the First District, to pay the taxes based upon said illegal assessment; and that they will impose penalties and seize the property of your petitioner, unless enjoined and restrained by this Honorable Court.

Wherefore petitioner prays that the City of New Orleans, through its proper officer, the Board of Assessors, through its proper officers, and John Fitzpatrick, the State Tax Collector for the First District, be duly cited to appear and answer hereto; and that after due proceedings had, there be judgment in favor of your petitioner and against said defendants, decreeing that the assessment against petitioner in the sum of $10000.00 on account of credits, money loaned etc. be declared to be null and void; and the assessment against petitioner on account of monies on hand etc., be reduced to the sum of $1500.00; and that the defendants, and each of them, be restrained and prohibited from collecting, or attempting to collect any taxes based upon said illegal assessment; and petitioner prays for all costs, and for general relief.

(Signed) HOWE, SPENCER & COCKE,
Att'ys for Petitioner.

Answer of Board of Assessors and Tax Collector.

Filed September 15, 1904.

Civil District Court, Division "C."

No. 74248.

METROPOLITAN LIFE INS. CO. OF NEW YORK
vs.
BOARD OF ASSESSORS ET ALS.

4 To the Honorable the Judges of the Civil District Court, for the Parish of Orleans.

Now come the Board of Assessors and the State Tax Collector by their undersigned attorney made defendant herein, and for answer to plaintiff's demand, deny all and singular the allegations in plaintiff's petition contained and pray that the demand therein set forth be dismissed at plaintiff'- cost, and further pray that they have judgment for (10%) ten per centum Attorney's fees, on the aggregate amount of the Tax and penalties herein involved until paid, or so much thereof as may be named by this Honorable Court and for all general and equitable relief.

F. C. ZACHARIE,
Att'y Tax Collector,
Per E. K. SKINNER,
(Signed) E. K. SKINNER,
Att'y for Board of Assessors & Tax Col.

* * * * * * *

Answer of the City of New Orleans.

Filed September 26th, 1904.

Civil District Court, Division "C."

No. 74248.

METROPOLITAN LIFE INS. CO.
vs.
BOARD OF ASSESSORS.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

Now comes into Court City of N. O. made defendant herein, and reserving the benefit of any and all exceptions to which it may be entitled, for answer to the plaintiff's petition denies all and singular the allegations is said petition contained.

Wherefore defendant prays to be hence dismissed with judgment in its favor, and for costs.

(Signed) H. G. DUPRE,
Ass't City Attorney.

Continued:

Extract from Minutes Division "C."

WEDNESDAY, *October* 19*th*, 1904.

Present: Honorable John St. Paul, Judge.

5 This case came up for trial on this day.

Present: Chas. P. Cocke, Esq., Att'y for Plaintiff.
H. Garland Dupre, Esq., Ass't City Attorney, for the City of New Orleans.
E. K. Skinner, Esq., Attorney for Board of Assessors.

And after hearing pleadings and the evidence, the case was continued to Monday the 24th day of October 1904, at eleven o'clock A. M. for argument of Counsel.

Civil District Court, Parish of Orleans, Div. "C."

No. 74248.

METROPOLITAN LIFE INSURANCE COMPANY
vs.
BOARD OF ASSESSORS.

Testimony in the above entitled and numbered cause, taken on the 19th day of October, 1904, before the Hon. John St. Paul, Judge.

Present: Messrs. Howe, Spencer & Cocke, For plaintiff. H. Garland Dupre, Esq., Ass't City Att'y for City of New Orleans. E. K. Skinner, Esq., for the Board of Assessors.

L. M. POOL, being duly sworn by the Minute Clerk, testified as follows:

Direct examination by Mr. COCKE:

Q. Mr. Pool, do you live in the City of New Orleans?
A. Yes, sir.
Q. What is your business?
A. Assistant Cashier of the Hibernia Bank & Trust Company.
Q. How long have you occupied that position?
A. Two years—two and a half years.
Q. Continuously?
A. Yes, sir.
Q. Will you please state whether or not the Metropolitan Life Insurance Company of New York was a depositor in your Bank during the months of January, February, March and April, 1904?

6

A. Yes, sir, but the account is carried in the name of George H. McHardy, but we know it to be the Metropolitan Life Insurance Company's account.
Q. Will you state if you have made up an account, showing the amount of daily average of balances on that account during the months I have mentioned?
A. Yes, sir.
Q. Will you produce it?
A. Here is the statement.
Q. What is the average monthly balance?
A. For January, $2553.83; for February, $3392.19.
Q. Now, for March?
A. $3896.35.
Q. April?
A. $3658.02.
Q. Have you got the average for the four months?
A. Why, no, but I can make it in a second by adding the four months together.

By Mr. COCKE: I offer in evidence this statement.

Q. Mr. Pool, will you say whether this is a fair representation of the daily average balances maintained by the Metropolitan Life Insurance Company for the year preceding those four months?

A. Yes, that is my recollection.

By the COURT: What is the average?

By. Mr. COCKE: Something in the neighborhoos of $3500.00. We have not figured the four months and made an average on those. I shall show by Mr. McHardy that from the balances taken by him from his books that it shows a daily average balance much smaller than that.

Q. Now, Mr. Pool, how would you account for that fact,—if it is a fact?

A. That is simple. As a rule, the balance in the bank is much smaller than that shown on the corporation books, because checks are in transit. You might have $1000 and send out a credit,
7 and you didn't have it.

Q. If, during the period covered by this, it is shown that during the whole period there was an average difference of $1000, it would not mean that there was $1000 in the bank, because checks were outstanding?

A. Yes, that is plain.

Q. This statement you have produced is correct?

A. Yes, sir.

By Mr. DUPRE:

Q. But the fact would still remain, even though checks be outstanding, that there would be that amount standing to the credit of the Metropolitan Life Insurance Company on your books?

A. Yes, sir.

Q. And yet they could issue their checks for $1000?

A. Yes, sir.

Q. That account is represented in your bank in the name of George G. McHardy, Agent?

A. Yes, sir, that is what it shows.

Q. And it is the property of the Metropolitan Life Insurance Company?

A. Yes, sir.

Q. Would it be very much trouble, Mr. Pool, for you to submit to us a statement, covering the year 1903, from January to December?

A. Of course, it would.

By the COURT:

Q. From your memorandum of the account that passed through your hands daily, *daily* can — fix the average balances?

A. Yes, but that is my recollection. In the nature of their business there would not be much variation, but in some business there would be a large variation during different times of the year,—such as insurance companies which collect large premiums.

By Mr. COCKE:

Q. You know that this Company is engaged in the industrial insurance business?

A. Yes, sir.

8 Q. And in that business the premiums are from five to thirty cents a week?

A. Yes, sir.

Q. And they are collected weekly?

A. Yes, sir.

Q. And consequently there would not be as much variation in their daily balances as there would be in a Company receiving very large premiums?

A. Yes, exactly.

JOSEPH W. CRUZAT being duly sworn by the Minute Clerk, testified as follows:—

Direct examination by Mr. COCKE:

Q. You reside in the City of New Orleans?

A. Yes, sir.

Q. What is your business?

A. I am one of the book keepers in the New Orleans National Bank.

Q. Will you state whether or not the Metropolitan Life Insurance Company was a depositor in your bank during the first four months of the year 1904?

A. We have no account by that name, we have an account in the name of George Lohre, Superintendent.

Q. Is it a fact or not, that that was the Company's account?

A. I cannot say.

By Mr. DUPRE: That is admitted.

By Mr. COCKE:

Q. Will you state whether you had occasion, at Mr. McHardy's request, to make up a statement showing the daily average balance of that account during those four months?

A. Yes, I was asked as to the daily balances, and this is as they appear on the ledger.

Q. You have not made up the daily average balance?

A. No, sir.

9 Q. How long would it take you to do that?

A. Some little time.

Q. Will you state whether or not, from your recollection of the account, are those figures fairly represented in the daily balances?

A. I can't say this, because I have been handling the account only a short while; I can only say that this is a copy of the ledger. I got the account only fifteen days before it was closed.

Q. You would not remember it?

A. No, sir.

It is admitted by counsel for the several defendants in this case that the plaintiff is a corporation, created under the laws of the State of New York and is domiciled in the State of New York, and is licensed to do business in the State of Louisiana.

By Mr. SKINNER: I object to that, because the Constitution of this

State requires that all foreign corporations doing business here must have a domicile here.

Admission.—It is admitted that the plaintiff Company is chartered under the laws of the State of New York and that its main office is in the City of New York and that its general officers reside there and that its domicile, under the laws of New York, is there.

It is further admitted by counsel for the several defendants that the plaintiff has complied with the conditions of the statute made a condition precedent to bring suit in respect to their return within the time provided by the statute,—petition to the Board of Assessors for the reduction, and petition to the Committee of the City Council, and that the Council Committee granted a reduction to the sum of $7500.00, for money in possession.

It is further admitted that the accounts of George G. McHardy in the Hibernia Bank, and George Lohre in the New Orleans National Bank, are the accounts of the Metropolitan Life Insurance Company.

It is also admitted that the State Tax Collector and the State Treasurer has threatened a seizure in this case and will proceed, unless prevented by order of Court.

GEORGE G. MCHARDY being duly sworn by the Minute Clerk, testified as follows:

Direct examination by Mr. COCKE:

Q. You live in the City of New Orleans?
A. Yes, sir.
Q. What connection have you with the plaintiff Company?
A. Superintendent.
Q. What are the nature of your duties?
A. Superintending the Company's business generally in the State of Louisiana.
Q. That is to say you are in charge of the local office in New Orleans?
A. Yes, sir.
Q. Where were you depositing the funds of the Company at the beginning of the year 1904 and prior thereto?
A. In the Hibernia Bank & Trust Company.
Q. Was there any other office at that time also in this same first district?
A. Yes, sir.
Q. Who was the superintendent of that office?
A. George Lohre.
Q. Is that office still in existence?
A. Yes, sir.
Q. What has become of it?
A. It has been amalgamated with my office.
Q. You deposited in the Hibernia Bank and Mr. Lohre deposited where?
A. In the New Orleans National.
Q. Now, when was Mr. Lohre's office abolished?
A. In May, 1904.

Q. Will you state whether or not the Company kept any accounts in the City of New Orleans,—bank accounts,—save those two that you have mentioned?

11 A. None at all, sir; no, sir.

Q. Therefore, as I understand, all of the collections made by you went into either one of those two banks?

A. Yes, sir.

Q. Mr. McHardy, have you at my request, undertaken to find out the daily average balances shown by your books during the four months that we have been speaking of?

A. Yes, sir.

Q. Will you produce the statement?

A. Here it is.

Q. What does that show the daily average balance to be?

A. $2173.00, the daily average.

Q. Then the difference between that and the amount shown by Mr. Pool would represent the difference in checks drawn from day to day?

A. Yes, sir.

Q. That is the way that you account for it?

A. Yes, sir.

Q. Now, Mr. McHardy, you return in this matter $1500,—you and Mr. Lohre together,—as the daily average balance?

A. Yes, sir.

Q. On your own statement, and on the statements made by these gentlemen from the Banks, it appears that your daily average balances were more than that. I want you to state how you happen to return those figures.

A. When the statement had to be made up, I sent across to the Hibernia Bank to ascertain our average for the first three months, and the memorandum returned, showed the balance to be $1200.00.

Q. A similar inquiry was made of the New Orleans National Bank?

A. Yes, sir.

Q. That information was given without an actual taking of the figures?

A. Yes, sir, there was no detail of the figures at all.

Q. Then, you acted upon that in making sworn return?

A. Yes, sir.

12 Q. Mr. McHardy, how much money had the Company in the shape of loans made in New Orleans on the 1st of January, 1904?

By Mr. DUPRE: If your Honor please, I object to any proof going to show a reduction of the item of the money loaned. His suit is merely for a cancellation.

By Mr. COCKE: I desire to show that this proof is in connection with the claim for cancellation and I will connect it.

By Mr. COCKE:

Q. Mr. McHardy, how much money did you have loaned in the State of Louisiana on the 1st January, 1904?

A. I should say pretty near closely to about $10,000.

Q. I want you to describe to the Court the method by which a loan is applied for to the Company and passed on by the Company, and how the contract is accepted.

A. The policy holder applies to me for a loan on his policy. I take the application and I advise the Company and I procure the necessary note.

Q. Where do you procure that note from?

A. From the Home Office in New York.

Q. Who passes upon the application?

A. The Home Office.

Q. In case they decide to accept that loan, they advise you?

A. Yes, sir.

Q. Then what do you do?

A. I take the policy with the note and send it to the Home Office, and if they pass upon it approvingly, the check is sent to me personally.

Q. Where were the notes, the *the* policies securing the notes, representing these $10,000 on the 1st day of January, 1904. In other words, where were they located?

A. In New York, sir.

Q. Are those notes always in New York?

A. Yes, sir.

Q. That is to say that they are sent by you to New York—when?

A. Immediately upon the loan being completed.

13 Q. Do you, in any case, retain for more than twenty four or forty eight hours the evidence of indebtedness in your office?

A. No, sir.

Q. In other words, within twenty four or forty eight hours, the notes and policies go to the Home Office in the course of business?

A. Yes, sir.

Q. Then as I understand you, on the 1st day of January, 1904, the Company had about $10,000 loaned here?

A. Yes, sir.

Q. The notes with the policies securing them were all in New York?

A. Yes, sir.

Q. Will you state how much money was loaned by the Company between the 1st of January, 1904, and say, the 1st day of April, 1904?

By Mr. DUPRE: This is not a question of amount at all, if anything was loaned at all. I object as immaterial and irrelevant in this suit for cancellation.

not?

By Mr. COCKE: I propose to show that I am now asking for a reduction; I don't claim a reduction here. I am claiming on this item an absolute cancellation of this whole item, and I propose to show the course of business upon which we are going to claim that this whole $10,000 is exempt.

By the COURT: The objection goes to the effect.

By Mr. DUPRE: To which ruling of the Court, counsel excepts,

reserves a bill, and has this note made in lieu of a formal bill of exceptions.

By Mr. COCKE:

Q. How much money did you loan in Louisiana in those first four months of the year?

A. I didn't count up to the end of April, but from the 1st of January to the 10th of April, we loaned $1492.00.

Q. From the 1st of January to the 10th of April, $1492.00?

A. Yes, sir.

By the COURT:

14 Q. Was that in the shape of notes?

A. Yes, sir.

Q. Not on open accounts?

A. No, sir.

Q. Just all on notes?

A. Yes, sir.

Q. Those notes you say, are immediately transferred to New York?

A. Yes, sir.

By Mr. COCKE:

Q. Then I understand you to testify that in addition to those loans in those four months, the same course was pursued in respect to the securing of the note and surrender of the policy that was followed in respect to the $10,000 existing on the 1st of January as a credit to the Company in New York?

A. Yes, sir.

Q. Will you state whether you made tenders to the City Treasurer and State Tax Collector?

A. Yes, sir.

Q. How much did you tender to the State Treasurer?

A. Forty six dollars.

Q. How much did you tender to the State Tax Collector?

A. Forty dollars and sixty cents.

Q. What was done in each case?

A. It was refused.

By the COURT:

Q. These deposits made by you in Bank were general deposits were they not?

A. Yes, sir.

Q. That is to say, the Bank did not undertake to return you specific money?

A. No, sir.

Q. It simply figured as a credit on the books of the Bank?

A. Exactly, sir.

Cross-examination by Mr. DUPRE:

Q. Mr. McHardy, you don't dispute in any way the returns made by the two Banks as to the daily averages which they had to your credit and to the credit of Mr. Lohre?

A. No, sir.

Q. You admit that on each one of the days set forth in these statement-, you could have gone to the Bank and claimed the amount there to your credit?

15 A. I could not claim it, because I had checks outstanding.

Q. But the bank would have paid that amount upon your check if presented on that day, would it not?

A. I suppose so.

Q. The money loaned, of which you have just spoken, does not include in any way the insurance premiums paid to your Company from week to week by the people who have policies in your Company?

A. The loans are only made on the larger class of policies.

Q. The insurers paid cash from week to week on their loans?

A. No, sir, the loan is continued until they are taken up. They simply pay interest year by year as it becomes due.

Q. If an insurer takes out a policy, his premiums are paid weekly or semi-weekly in cash?

A. Yes, sir, on industrial policies.

Q. So that phase of your business,—the paying into your Company by the insurers of their weekly or monthly premiums,—is not included by you in this amount which you say was loaned by your Company to policy holders?

A. No, sir.

Q. It is only after the policies have reached a certain stage that holders can raise money on them?

A. Yes, that is right.

Q. Well, how do they proceed for the raising of money on their policies?—To whom is application made,—to you?

A. Yes sir.

Q. What do you do after that?

A. I forward the application to the Home Office, with the request that the loan be granted them (if I consider it all right)—and that the necessary loan note be forwarded, and the note is sent to me.

Q. Where is the note executed?

A. Here, as far as the signatures are concerned.

Q. What do you do with the note?

A. I take the policy, attach it to the note with any letter

16 necessary in the case, and forward it to the Home Office.

Q. Where is the interest paid on those notes?

A. Here, to me.

Q. And the interest is remitted by you?

A. Yes, sir.

Q. And when the note is liquidated—paid in full—how is that managed?

A. It is invariably paid to me.

Q. Whom is payment made to for final settlement of the note,—in the same way as the interest?

A. Yes, sir.
Q. And the note is sent back to you and you deliver to the owner?
A. Yes, sir.

By Mr. COCKE:

Q. Are you required to keep any books, showing the condition of the loans, or is that done at the Home Office?
A. We don't keep any special books for account of loans.
Q. The only way that the loans would figure in your local transaction would be by the deposit when made?
A. Yes, sir.
Q. And that would go into your general account, and figures in this account that you have already spoken of?
A. Yes, sir.

By Mr. DUPRE:

Q. What is the average amount of your income from premium payments on your industrial policies during the year?
A. It averages now pretty near $7000 per week.
Q. And that is paid in cash to you?
A. Oh, yes, sir.

By Mr. COCKE:

Q. What is the system of remittances here?
A. The industrial remittances are made once a week. The remittances under two other branches, which is the ordinary branch,—one branch is remitted on the 10th or the 25th of the month, and the other on the 5th and 20th of each month.

17 By Mr. DUPRE:

Q. Let me understand these different branches. It is all life insurance business?
A. Yes, sir.
Q. And the distinction is whether the payments are weekly, or annually, or semi-annually?
A. Yes, sir.
Q. Is there any distinction between your policy holders?
A. No, sir.

By Mr. COCKE:

Q. Mr. McHardy, you have authority to pay all your office expenses here, and do pay them, don't you?
A. Yes, sir.
Q. They are pretty heavy?
A. You mean salaries?
Q. Yes?
A. Yes, but I receive a check from the Home Office to pay them with.
Q. You receive a check from the Home Office to pay the salaries with?
A. Yes, sir.
Q. To pay your superintendents?

A. Yes, sir; I get a list of the salaries weekly.
Q. That check is drawn on what bank?
A. It comes from New York. It is drawn on the National Shoe and Leather Bank of New York.

By Mr. DUPRE:

Q. How do you receive remittances to pay those borrowers?
A. By check.
Q. On what bank?
A. The National Shoe & Leather Bank of New York.
Q. How about renewals for a time when the time expires?
A. The borrower has the right to take up the note when due or to pay interst.
Q. Have you had occasion to sue in the last few years in these Courts, any of those who refused to pay you?
A. No, sir.

18 By the COURT:

Q. In other words, the loans of which you speak, are made exclusively upon policies in your own Company?
A. Yes, sir.
Q. And you never loan any more than the value of the policy?
A. Exactly.

By Mr. DUPRE: It is admitted that the assessment rolls for 1904, under the assessment against the Metropolitan Life Insurance Company shows an item of money in possession of $7500.00, and the further item of money loaned at interest, credits, and so forth $10,000.

It is also admitted that Mr. Pool, of the Hibernia Bank & Trust Company, figures the daily average balance to amount to $3370.00, and that Mr. Cruzat, of the New Orleans National Bank, figures the George Lohre, Superintendent's account, to show the daily balance of $815.00.

NOTE.—Testimony closed; case continued to Monday October 25th for argument.

A true and correct Report.
(Signed) A. E. OLIVERIA,
Stenographer.

Statement. Offered in Evidence by Counsel for Plaintiffs.

Filed October 26th, 1904.

Geo. Lohre, Sup't, *of* the New Orleans National Bank, January, 1904.

19

Dr. Cr. January, 1904.		February, 1904.		March, 1904.		April, 1904.	
1	557.93	1	707.73	1	1154.10	1	580.96
2	757 02	2	1181.60	2	1490.10	2	509.10
3	757.02	3	1360.40	3	1574.57	3	509.10
4	473.87	4	527.44	4	497.30	4	758.40
5	886.42	5	667.87	5	585.30	5	1003.43
6	1325 47	6	558.	6	585.30	6	1319.43
7	360 49	7	558.	7	585.30	7	367.82
8	360.49	8	410.	8	1286.39	8	535.23
9	444.17	9	1228.43	9	1595.94	9	535.23
10	444.17	10	1540.53	10	406.35	10	535.23
11	698.56	11	659.27	11	541.90	11	940.09
12	1042.06	12	891.10	12	463.96	12	1064.63
13	1431.06	13	659.72	13	463.96	13	849.38
14	554.91	14	659.72	14	527.62	14	1164.58
15	534.79	15	689.77	15	1254.65	15	574.60
16	576.49	16	689.77	16	1537.65	16	430.79
17	576.49	17	1294.55	17	1553.90	17	430.79
18	960.65	18	273.26	18	523.62	18	711.19
19	1718.85	19	538.79	19	523.62	19	1075.09
20	1294.85	20	559.35	20	523.62	20	1435.40
21	627.38	21	559.35	21	795.52	21	1591.35
22	631.43	22	559.35	22	1292.55	22	668.20
23	631.43	23	1301 73	23	1626.75	23	668.20
24	631.43	24	1598.61	24	1841.95	24	668.20
25	449.60	25	392.72	25	607.15	25	668.20
26	1360.61	26	522.52	26	487.05	26	834.29
27	1707.51	27	432.32	27	487.05	27	1188.29
28	759.35	28	432.32	28	447.14	28	1202.98
29	936.12	29	421.50	29	1074.71	29	220.82
30	839.93	30		30	1390.71	30	220.82
31	839.93	31		31	580.96	31	
	25,170.58		21,876.71		28,806.69		23,262.82

A true copy.
Signed,
J. W. CRUZAT,
Bkpr.

A true copy.
Signed,
J. W. CRUZAT.
Bkpr.

A true copy,
Signed,
J. W. CRUZAT,
Bkpr.

A true copy.
—,
— —,
—.

On the reverse:

25,169.78
21,875.71
28,306.69
23,262.82

98,615.00

$815.00
for the 4 months.

Statement. Offered in Evidence by Counsel for Plaintiffs.

Filed October 26th, 1904.

20 Average for 4 Months, $3370.00.

1904.		
Jan'y 1		3853.29
2		1768.33
3		1768.33
4		1072.33
5		1073.33
6		3120.13
7		670.03
8		670.03
9		2455.24
10		2455.24
11		3171.86
12	6099.39	4074.99
13		3574.99
14		1694.47
15	75.37	
16		1542.85
17		1542.85
18		2049.57
19		4707.07
20		4707.07
21		1568.48
22		1717.31
23		2954.83
24		2954.83
25		3913.24
26		6084.88
27		6084.88
28		2680.81
29		1380.92
30		1966.51
31		1966.51
		79244.20
Less Over dft. Jan. 15/04		75.37
		79168.83

Average Bal. $2553.83.

21

Feb. 1		1807.64
2		4361.99
3		4166.99
4		544.35
5		1770.02

6	.....	2806.50
7	.....	2806.50
8	.....	2796.20
9	.....	6231.74
10	.....	4458.80
11	.....	1865.79
12	.....	2891.78
13	.....	2537.33
14	.....	2537.33
15	.....	3385.42
16	.....	3385.42
17	.....	6376.70
18	.....	3011.25
19	.....	2818.85
20	.....	2871.53
21	.....	2871.53
22	.....	2871.53
23	.....	5576.58
24	.....	6735.64
25	.....	2610.90
26	.....	3832.22
27	.....	4027.61
28	.....	4027.61
		98373.65

Average Balance $3392.19.

22

1904.

March 1	.....	5048.01
2	.....	5057.15
3	.....	6571.94
4	.....	1557.40
5	.....	2062.39
6	.....	2062.39
7	.....	2702.72
8	.....	5189.57
9	.....	5240.85
10	.....	3056.58
11	.....	3597.79
12	.....	2202.08
13	.....	2202.08
14	.....	2303.64
15	.....	5834.10
16	.....	5931.92
17	.....	2462.11
18	.....	2019.59
19	.....	2592.32
20	.....	2592.32
21	.....	2950.74
22	.....	5855.66

23	.....	5860.66
24	.....	4028.75
25	.....	4963.54
26	.....	4971.61
27	.....	4971.61
28	.....	4631.10
29	.....	4945.69
30	.....	4945.69
31	.....	2274.78
		120786.78

Average balance of $3896.35.

23

1904.

April 1	.....	2274.78
2	.....	1580.29
3	.....	1580.29
4	.....	2298.38
5	.....	5334.19
6	.....	5334.19
7	.....	2534.85
8	.....	2924.33
9	.....	4086.12
10	.....	4086.12
11	.....	2892.70
12	.....	5042.63
13	.....	4542.63
14	.....	1364.48
15	.....	1502.44
16	.....	3422.88
17	.....	3422.88
18	.....	3608.30
19	.....	5779.32
20	.....	5779.32
21	.....	3109.17
22	.....	3676.73
23	.....	4140.05
24	.....	4140.05
25	.....	4697.32
26	.....	7389.05
27	.....	7389.05
28	.....	901.39
29	.....	2518.73
30	.....	2387.98
		109740.64

Average balance $3658.02.

24 *Submitted.*

Extract from Minutes, Division "C."

MONDAY, *November 14th*, 1904.

Present: Honorable John St. Paal, Judge.

After hearing argument of Charles P. Cocke, Esq., Attorney for Plaintiff and of H. Garland Dupre Esq., Ass't City Attorney for defendants, this case was submitted and taken under advisement.

Judgment.

Civil District Court, Parish of Orleans, Division "C."

No. 74248.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

In this case submitted for adjudication, the law and the evidence being in favor of plaintiff and against the defendants and for the reasons assigned, in open Court on this day, in the written opinion on file.

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, The Metropolitan Life Insurance Company of New York, and against the Defendants, The City of New Orleans, The Board of Assessors for the Parish of Orleans and John Fitzpatrick State Tax Collector for the First District of New Orleans, decreeing and ordering that the assessment for the year 1904, against the plaintiff Company, on moneys on hand etc., be reduced to the sum of Four thousand dollars and further decreeing the assessment for said year against said Company, in the sum of Ten thousand dollars on account of credits, money loaned, etc., to be null and void.

It is further ordered, that said defendants and each of them be and they are hereby restrained and prohibited from collecting or attempting to collect any taxes based upon said illegal assessment, and that defendants pay all costs of this suit.

Judgment read and rendered in open Court December 5, 1904.

Judgment signed in open Court December 9th, 1904.

25 (Signed) JOHN ST. PAUL, *Judge.*

Reasons for Judgment.

Filed December 5th, 1904.

Civil District Court, Division "C."

No. 74248.

METROPOLITAN LIFE INS. CO.
vs.
BOARD OF ASSESSORS & ALS.

Opinion.

This is an action for reduction of assessment on "Money in possession, on deposit, etc." and for the cancellation of an assessment upon "credits, money loaned, bills receivable, &c.

The evidence shows, and it was admitted at the bar by all counsel, that the average of "Money in possession and on deposit" by plaintiff does not exceed $4,000.00 and that item ought therefore to be reduced accordingly.

The evidence also shows, and it is not disputed, that the only "Credits, money loaned and bills receivable" belonging to the plaintiff and intended to be taxed consist of loans made to its policy holders in this State and evidenced by their notes secured by pledge of its own policies, all of which, as soon as executed, are transmitted to the home office in the City of New York and are returned to this city only for purposes of collection or renewal.

The authority under which it is proposed to assess and tax these notes is the 7th section of Act No. 170 of 1898, the last clause whereof reads as follows; * * * *and all bills receivable obligations, or credits arising from business done in this State are hereby declared assessable within this State and at the business Domicile of said non-resident, his agent or representative."*

This section is identical in terms with the corresponding section of act No. 106 of 1890, a statute which stood unrepealed when the Supreme Court of this State declared, substantially, in Liverpool &c. Ins'ce Co. *vs.* Board of Assessors, 44 Ann. 7660; and 770, that *"no Legislative power existed to change the situs of debts due to*
26 *non-residents"* unless such debts had assumed some *"concrete form"* in the evidences thereof and *"such evidences are situated in the State,* language tantamount to a declaration that this provision of the Statute was repugnant to some higher law; *i. e.,* was *"unconstitutional"*—this high authority then, I am constrained to declare that so much of the 7th Section of Act No. 170 of 1898 as attempts to make assessable in this State any bills receivable due to non-residents, unless the same are *"situated in the State,"* is unconstitutional and therefore, void, and any assessment made in pursuance thereof is therefore null."

There must be judgment herein accordingly.
N. O. Dec. 5, 1904.
(Signed) JOHN ST. PAUL, *Judge.*

Judgment Signed.

Extract from Minutes, Division "C."

FRIDAY, *December 9th,* 1904.

Present: Honorable John St. Paul, Judge.
This Judgment read and rendered in open Court on December 5th, 1904, was signed in open Court on this day.

Motion of Appeal.

Entered on Minutes of Same Date. Filed December 20th, 1904.

Civil District Court, Division "C."

No. 74248.

METROPOLITAN LIFE INSURANCE CO.
vs.
BOARD OF ASSESSORS ET ALS.

On motion H. G. Dupre, Assistant City Attorney, of George H. Terriberry, Attorney for the Board of Assessors for the Parish of Orleans, and of F. C. Zacharie, Attorney for John Fitzpatrick, State Tax Collector of the First District of New Orleans and on suggestion to the Court that there is error to the prejudice of these defendants in the judgment rendered herein and signed on Dec. 9, 1904, and that accordingly they desire to appeal suspensively to the Supreme Court of Louisiana.

27 It is ordered that a suspensive appeal, without bond as the law directs, be granted to the defendants herein from the judgment herein rendered, and signed on Dec. 9, 1904, returnable to the Honorable the Supreme Court of Louisiana on the first Monday of January, 1905, according to law.

Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, William B. Murphy, Deputy Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that the foregoing Thirty-one (31) pages do contain a true, correct and complete Transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein Metropolitan Life Ins. Co. of

New York is plaintiff, and Board of Assessors for the Parish of Orleans is defendant, instituted in this Court and now in the records thereof under the No. 74248 of the Docket thereof, Div. C., the Honorable John St. Paul, Judge.

In Testimony Whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the City of New Orleans, on this Third day of January in the year of our Lord, one thousand nine hundred and five and in the one hundred and twenty-ninth year of the Independence of the United States of America.

(Signed) W. B. MURPHY,
[SEAL.] *Deputy Clerk.*

28 *Proceedings Had in the Supreme Court of the State of Louisiana.*

Continuance.

NEW ORLEANS, THURSDAY, *March* 30, 1905.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

This case was ordered by the Court to be continued with preference.

Continuance.

NEW ORLEANS, THURSDAY, *April* 27, 1905.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

This case was ordered by the Court to be continued with preference.

Motion and Order to Continue by Preference.

NEW ORLEANS, THURSDAY, *May* 25, 1905.

The Court was duly opened, pursuant to adjournment.

29 Present: Their Honors Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

On motion of Charles Pollard Cocke, Esq., of counsel for plaintiff and appellee, and upon suggesting the absence, of Mr. Francis Charles Zacharie of counsel for John Fitzpatrick, State Tax Collector, one of the defendants and appellants, due to illness; It is ordered by the court that this cause, heretofore assigned for hearing today, be continued with preference.

Cause Argued and Submitted.

NEW ORLEANS, THURSDAY, *November* 9, 1905.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice, Francise T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

This cause came on this day to be heard and was argued by counsel:—Mr. Charles Pollard Cocke, Esq., opened for the plaintiff and appellee; Mr. Francis Charles Zacharie replied on behalf of the defendants and appellants; and Mr. Cocke closed the argument. The court then took the cause under advisement upon the briefs now on file for the respective parties in interest.

30 *Judgment.*

NEW ORLEANS, MONDAY, *November* 20, 1905.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

His Honor Mr. Justice Nicholls, pronounced the opinion and judgment of the Court in the following case:—

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

Appeal from the Civil District Court, Parish of Orleans.

For the reasons assigned it is ordered adjudged and decreed that in so far as the judgment appealed from decrees the assessment against the plaintiff, in the sum of $10,000 for the year 1904, on account of credits, monies loaned etc., to be null and void, and decrees the unconstitutionality of the law upon which it is based, the same be annulled, avoided and reversed, and that in so far as such judgment fails to award to the defendants the attorney's fees allowed by law, the same be amended to the extent that there now be judgment in favor of the defendants, the Tax Collector, and against the plaintiff condemning the latter to pay in addition to the tax to be recovered 10% on that portion thereof with respect to which no reduction of assessment had been obtained in this proceeding.

It is further ordered adjudged and decreed that in all other respects the judgment appealed from be affirmed, the plaintiff to pay costs of appeal.

Opinion.

31 & 32 MONDAY, *November* 20, 1905.

Mr. Justice Nichols.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

Appeal from the Civil District Court for the Parish of Orleans.

Statement of the Case.

The Plaintiff, a corporation created and existing under the laws of the State of New York appearing in the suit through its authorized agent in the City of New Orleans alleged:

That it is a corporation engaged in the business of Life Insurance in various portions of the United States and its domicil is in the City of New York where its general or Home office- are situated and its officials reside. That it has an office in the City of New Orleans, where it is represented by subordinate managers only. That in accordance with law in the month of Jan. 1904, to wit, on or about

the 21st day of January, 1904, it filed with the Board of Assessors for the Parish of Orleans, its sworn statement of all the property owned by it subject to taxation under the laws of this State. That notwithstanding the fact that Petitioner had made a true return of its taxable property to the said Board of Assessors, said Board did nevertheless proceed to, and did assess petitioner upon property not owned or held by it or any of its officers, in the State of Louisiana; and said Board, despite the due and seasonable protest of petitioner did make an erroneous illegal and void assessment on the following, to-wit: $10,000.00 credit, money loaned etc., $10,000.00 money in possession etc., Petitioner averred that it did not have at any time during the current year, on hand or on deposit within the State of Louisiana, funds exceeding the sum of $1500.00, as set forth in their sworn return. That the assessment in the sum of $10,000.00 made by said Board on account of credits, money loaned etc., was illegal null and void for the reason that any credits, bills receivable or monies loaned by and due petitioner are not located and payable in
33 this State but are located and payable and taxable only at the domicil of petitioner, and are not subject, under the Constitution of the United States and the laws of this State, to taxation by the State of Louisiana; and that said assessment by the Board of Assessors was an attempt to extend the taxing privilege of the State of Louisiana beyond the territorial jurisdiction thereof and constituted a taking of property without due process of law in violation of the 14th Article of Amendment of the Constitution of the United States, which this petitioner expressly pleaded and claimed the benefit of.

That in accordance with the statutes made and provided petitioner duly and seasonably applied to said Board of Assessors and to the Revision Committee of the City Council for the cancellation of said illegal assessment and for the reduction of said assessment of money on hand to the amount returned, under oath by this petitioner to the Board of Assessors; that the said Board of Assessors upon application reduced the said amount of $10,000.00, assessed to petitioner as money in possession, to the sum of $7500.00 instead of to $1500.00 as prayed; but persisted in assessing petitioner with the um of $10,000.00 for credits, bills receivable, etc.

That petitioner thereupon made a legal tender of the sum of $46.00 to the Treasurer of the City of New Orleans, being in full of the amount of taxes legally due by it for the current year which tender was refused. That it had been notified by the said Treasurer and by John Fitzpatrick, State Tax Collector for the First District to pay the taxes based upon said illegal assessment and that they would impose penalties and seize the property of petitioner unless enjoined and restrained by this Honorable Court: In view of the premises petitioner prayed that the City of New Orleans through its proper officer, the Board of Assessors, through its proper officer, and John Fitzpatrick and State Tax Collector for the First Dis-
34 trict, be duly cited to appe-r and answer hereto; and that after due proceedings had there be judgment in favor of petitioner and against said defendants decreeing that the assessment

against petitioner in the sum of $10,000.00, on account of credits, money loaned etc., be declared to be null and void, and that the assessment against petitioner on account of monies in hand, etc., be reduced to the sum of $1500.00: and that the defendants and each of them, be restrained and prohibited from collecting or attempting to collect any taxes based upon said illegal assessment, and petitioner prayed for all costs and for general relief.

The Board of Assessors and State Tax Collector filed an answer in which they pleaded the general issue and prayed that Plaintiff's demand be dismissed. They prayed that they have judgment for 10% attorneys' fees on the aggregate amount of the taxes and penalties involved in the case until paid or so much thereof as might be named by the Court and for all and general relief.

The City of New Orleans pleaded the general issue and prayed that Plaintiffs demand be dismissed and that there be judgment in its own favor.

The District Court declared that the law and the evidence were in favor of the Plaintiff and against the Defendants and for the reasons assigned in open Court in the written opinion it rendered judgment in favor of plaintiff.

The Judgment adjudged and decreed that there be judgment in favor of plaintiff, The Metropolitan Life Insurance Company of New York, and against the Defendants, the City of New Orleans. The Board of Assessors for the Parish of Orleans and John Fitzpatrick State Tax Collector for the First District of New Orleans decreeing and ordering that the assessment for the year 1904, against the Plaintiff Company on moneys in hand, etc., be reduced to the sum of Four Thousand Dollars and further decreeing the assess-
35 ment for said year against said Company in the sum of ten thousand dollars on account of credits, money loaned etc., to be null and void.

It further ordered that said defendants and each of them be and they are hereby restrained and prohibited from collecting or attempting to collect any taxes based upon said illegal assessment and that defendants pay all costs of this suit."

The written reasons were as follows:

"This is an action fo- reduction of assessment on Money in possession, on deposit, etc., and for the cancellation of an assessment upon credits, money loaned, bills receivable, &c.

The evidence shows and it was admitted at the bar by all counsel, that the average of "Money in possession and on deposit by plaintiff does not exceed $4,000.00 and that item ought therefore to be reduced accordingly.

The evidence also shows and it is not disputed, that the only "Credits, money loaned and bills receivable," belonging to plaintiff and intended to be taxed consist of loans made to their policy holders in this State, and evidenced by their notes secured by pledge of its own policies, all of which as soon as executed are transmitted to the Home office in the City of New York and are returned to this City only for purposes of collection or renewal.

The authority under which it is proposed to assess and tax these

notes is the 7th Section of Act No. 170 of 1898, the last clause whereof reads as follows: * * * and all *bills receivable, obligations or credits arising from business done in this State are hereby declared assessable within this State and at the business domicil- of said non-resident, his agent or representative.*"

This section is indentical in terms with the corresponding section of Act No. 106 of 1890, a statute which stood unrepealed when the Supreme Court of this State declared, substantially in Liverpool &c. Ins. Co. *vs.* Board of Assessors, 44 Ann. 760, 770, that "no Legislative power existed to change the situs of debts due to non residents" unless such debts had assumed some "concrete form"—in
36 the evidence thereof and "*such evidences are* situated in the State, language tantamount to a declaration that this provision of the Statute was repugnant to some higher law; *i. e.,* was "unconstitutional" under this high authority, then, I am constrained to declare that so much of the 7th Section of Act No. 170 of 1898 as attempts to make assessable in this State any bills receivable due to nonresidents, unless the same are "situated in the State," is unconstitutional and therefore void, and any assessment made in pursuance thereof is therefore null."

The Defendant appealed.

In the brief on behalf of the Insurance Company, the *the* statement is made that on the trial Defendant's Counsel made such admissions as reduced this cause to the sole question of the legality and unconstitutionality of the attempted tax on credits, money loaned, etc. * * *

"The plaintiff is a corporation under the laws of New York. It had duly complied with the statutes of the State regulating the entry and doing of business by foreign insurance companies and had and maintains an office in the City of New Orleans. Following the usual notice on Jan. 21st, 1904, it filed its sworn return of property owned by it and subject to taxation in this State. The Board of Assessors proceeded to alter this section in two particulars. It assessed to the Plaintiff the sum of $10,000 as money in possession or on deposit and $10,000 as credits, monies loaned and Bills receivable."

"On the 1st of January, 1904, the Plaintiff had outstanding loans made to residents in Louisiana amounting to about $10,000. Between the first of January and the 1st of April 1904, the Plaintiff loaned to persons in Louisiana the sum of $1492.

"The method of making these loans was that described by Mr. McHardy, the resident superintendent."

"*Q.* I want you to describe to the Court the method by which a loan is applied for to the Company and passed on by the Company and how the contract is accepted."

37 A. The policy holder applies to me for a loan on his policy; I take the application and I advise the Company and procure the necessary note.

Q. Where do you procure that note from?

A. From the home office at New York.

Q. Who passes on the application?

A. The home office?

Q. In case they decide to accept the loan, they advise you?

A. Yes.

Q. Then what do you do?

A. I take the policy, with the note, and send it to the home office, and if they pass upon it approvingly, the check is sent to me, personally.

Q. Where were the notes and the policy securing the notes representing this $10,000 on the first day of January 1904? In other words, where were they located?

A. In New York.

Q. Are those notes always located in New York?

A. Yes, sir.

Q. That is to say, they are sent by you to New York, when?

A. Immediately upon the loan being completed.

Q. Do you in any case retain for more than 24 or 49 hours the evidence of indebtedness in your office?

A. No sir.

Q. In other words, within 24 or 48 hours the notes and policies go to the Home office in the course of business?

A. Yes, sir.

In the Syllabus to the brief of the Appellant the following among other propositions are laid down:

1. The doctrine of *mobilia sequuntur personam* is subject to so many exceptions that it can be applied only in the simplest cases Story on Conflict of Laws 2d Ed. Sec. 334 P. 414. 175. U. S. 309. 177 U. S. 133. 188 U. S. 203. Blackstone *vs.* Miller.

2. It can never prevail in the face of positive law to the
38 *to the* contrary 4 M. 20, 5 M. 23, 7 M. 24, 17 La. 590, 8 R. 414, 24 Ann. 93, 579; 31 Ann. 509 especially when there is a positive tax law to the contrary. 2 Ann. 667, 9 Ann. 166; 10 Ann. 391; 12 Ann. 577. The decisions in 41 Ann. 656, 1017, do not controvert that principle, because under the tax acts of 1886 and 1888 there were no provisions in conflict with the doctrine of *mobilia sequuntur personam.*

3. The jurisprudence of the Courts of other States establish this as one of the exceptions to the maxim. 2 Jones Eq., N. C. 51; 21 Vt. 161; 9 N. H. 42; 47 Mo. 600; 29 Cal. 533; 40 Mo. 580; 14 Kan. 602; 40 Ill. 198; 2 Duer. 110; 3 N. Y. 390; and has also been maintained in 47 Ann. 1544; 49 Ann. 49; 49 Ann. 1175. The decision in 44 Ann. 765 is not sustained by the authorities cited therein.

19 Wall. 499 and 106 U. S. 333, in effect, overrule 15 Wall. 300; 44 Ann. 776, while seeming to oppose our contention, yet only modifies it while 46 Ann. 1, is against it.

4. Investments by a non resident of the State are subject to taxation under the laws of the State when made by a resident agent who is employed to invest moneys at whose office the loans are made payable, and to whom the notes taken for loans are returned for collection. 177 U. S. 133; 175 U. S. 309.

5. Whether our contention hereinbefore set forth be correct or not, there can be no serious question that a State can tax a foreign corporation, especially a foreign insurance company, to any extent

or in any manner it sees proper, for the privilege of doing business in the State. Thompsons Commentaries on Corporations, Secs. 8087 & 7900, Vol. 6, and authorities there cited; Cook on Corps., Vol. 2 4th ed. p. 1080, and authorities there cited; Cooley on Taxation, 387; Desty of Taxation, Vol. 1, 372, 229; Burroughs on Taxation 151; 8 Wall. 168; 10 Wall. 573; 100 Mass. 531; 99 Mass. 148; 10 Wall. 415; 94 U. S. 535; 96 U. S. 12; 113 U. S. 739; 120 U. S. 495; 127 U. S. 640; 143 U. S. 22; 143 U. S. 314; 165 U. S. 194; 166 U. S. 154.

39 On the trial of the case it was admitted that the State Tax Collector threatened a seizure in this case and would proceed unless prevented by order of Court.

On cross examination of Mr. McHARDY the local Superintendent he was questioned as to how the policy holders obtained loans and method of proceedings in respect to their applications and testified as follows:

Q. To whom is application made—to you?

A. Yes, sir.

Q. What do you do after that?

A. I fo-ward the application to the home office with the request that the loan be granted them, (if I consider it all right) and that the necessary loan note be forwarded and the note is sent to me.

Q. Where is the note executed?

A. Here, as far as the signatures are concerned.

Q. What do you do with the note?

A. I take the policy, attach it to the note with any letter necessary in the case, and forward it to the Home Office.

Q. Where is the interest paid on those notes?

A. Here, to me.

Q. And the interest is remitted by you?

A. Yes, sir.

Q. And when the note is liquidated, paid in full—how is that managed?

A. It is invariably paid to me.

Q. Whom is payment made to for final settlement of the note—in the same way as the interest?

A. Yes, sir.

Q. And that note is sent back to you and by your delivered to the owner?

A. Yes, sir.

Q. How do you receive remittances? to pay those borrowers?

A. By check.

40 Q. On what bank?

A. The National Shoe & Leather Bank of New York.

Q. How about renewals for a time when the time expires?

A. The borrower has the right to take up the note when due or to pay interest.

Q. Have you had occasion to sue in the last few years in these Courts, any of those who refused to pay you?

A. No, sir.

Counsel for Appellants say "The sum and substance of the testimony is that the Plaintiffs received about $10,000 a year on loans

which they remit to the Home office and they receive $7000 per week in cash as premiums.

On this showing Plaintiffs contend that the tax can not be assessed on the credits and money loaned on the principle of *mobilia sequuntur personam.*"

In Bluefields Banana Company *vs.* The Board of Assessors reported in the 49th Annual 48, the rule *mobilia sequuntur personam* was declared to be a fiction of the law not resting of itself upon any constitutional foundation and which gives way before express law destroying it in any given case where constitutional requirements do not stand in the way. Answering the claim asserted that the taxation provided for in that case could not be made effective, the Court said "conceding that proposition true it did not furnish a test as to its constitutionality." We see no reason to alter the views so announced. We believe they are in accord with generally accepted judicial opinion. In Blackstone *vs.* Miller 188 U. S. 206, the Supreme Court of the United States referring to the maxim "*mobilia sequuntur personam*" said that "when logic and the policy of a state conflict with a fiction due to historical tradition the fiction must give way."

There can be no doubt that the 7th Section of the Act of 1898 quoted in the judgment of the District Court announced the policy of the state touching the taxation of credits and Bills of Exchange

representing an amount of the property of non-residents

41 equivalent or corresponding to said bill or credits which was utilized by them in the prosecution of their business in the State of Louisiana. The evident object of the statute was to do away with the discrimination theretofore existing in favor of non-residents as against residents and place them on an equal footing. The statute was not arbitrary but a legitimate exercise of legislative power and discretion.

It is not contested that the State has the right in consenting to allow foreign corporations to carry on business within her borders to attach such conditions to such consent as she pleases. These foreign corporations are under no obligation to accept the terms but if they do accept them and carry on business in the State they must comply with them. They can not avail themselves of the benefits of the co-sent and repudiate the obligations attached thereto. The conditions of consent may refer to the matter of taxation as well as to anything else. When foreign corporations come into the State for business purposes they are constructively present in the State and voluntarily place themselves within the jurisdiction of the State and accept and subject themselves to the laws thereof.

As was said in Bluefields Banana Co. *vs.* Board of Assessors these foreign corporations doing business in Louisiana transact their business precisely as do resident business men and corporations. They derive all the advantages to be obtained from the State and City governments which residents receive and we see no reason why they should not be taxed as claimed, unless there be insuperable legal objections in the way.

This language was approvingly quoted in Comptoir National *vs.*

Board (52 A, 1322). Taxation is the corelative of protection. The evidence in the present case established the fact that the notes referred to were signed, by the borrowers in the State of Louisiana and delivered there to the local superintendent of the Company, who turned over to them in Louisiana the amount borrowered of the Company.

42 As stated in the Comptoir National case "the particular manner or instrumentality by which the monies used by the Company in the course of its continuing business in Louisiana was obtained, was a matter of no moment or significance in the consideration of the question we are now dealing with. The Company beyond question loaned money in Louisiana which for the purposes of the loan were the companies monies and the borrowers gave their own notes to the Company to represent the monies received from the Company. The notes represent an equivalent amount of money of the Company in Louisiana. The moment these monies were received in Louisiana and there delivered to the Company's local Superintendent, the taxing power attached against the Company and immediately after the delivery of the monies to the borrowers, the tax struck the notes delivered to the Superintendent in representation of the monies, regardless of what disposition might be made of them subsequently. It is a mistake to suppose that because the tax debtor might in order to evade the payment of the tax, or for any other reason remove the notes beyond the limits of the State, the tax would be destroyed. An evasion would not be tolerated. It would not be necessary for the State to go beyond its limits for the enforcement of the tax against the Company because the notes should have been taken outside the State. Art. 233 of the Constitution declares "Taxes on movables shall be collected by seizure and sale by the Tax Collector of the movable property of the delinquent to pay the tax. Sale of such property shall be made at public auction without appraisement, after ten days advertisement made within ten days from date of seizure and shall be absolute and without redemption. If the tax collector can find no corporeal movables of the delinquent to seize he may levy on corporeal rights by notifying the debtor thereof or he may proceed by summary rule in the Courts to compel the delinquent to deliver up for sale property in his possession or under his control.

The State would have power over the person of the debtor
43 through service on their local superintendent. In Blackstone *vs.* Miller the Court said that power over the debtor gave jurisdiction and that matters could be disposed of not because of any theoretical speculation concerning the whereabout of the debt but because of the practical fact of the power of the State over the person of the debtor.

There was no reason for or justice in the withdrawal by the Company of the notes, and the holding of them in its vaults until required in Louisiana for the purpose of their payment as it is declared was done. Their value was in no manner enhanced by that fact. Their value continued to rest in the fact that the notes were secured as to payment by the property of the debtors in Louisiana

and through the right to their enforcement under Louisiana law in the Courts of that State. The investment by the Company was as to value due to nothing in New York but entirely to what was done in Louisiana. It is claimed by the Plaintiff that the law of Louisiana takes its property from it without due process of law but it is not pointed out in what way there was not due process of law, and we fail to see wherein there was not. Appellant does not urge and could not urge that it did not obtain the equal protection of the law, for what it is now seeking to preserve is *the greater protection* which has been accorded foreign corporations over residents of Louisiana up to the time that the statutes were changed.

We are of the opinion that the judgment appealed from adjudging and decreeing the statute to be unconstitutional, is erroneous. We hereby hold and decree the statute to be constitutional.

For the reasons assigned it is ordered adjudged and decreed that in so far as the judgment appealed from decrees the assessment against the plaintiff, in the sum of $10,000 for the year 1904, on account of credits, monies, loaned etc., to be null and void, and decrees the unconstitutionality of the law upon which it is based, the same be annulled, avoided and reversed and that in so
44 far as such judgment fails to award to the defendants the attorney's fees allowed by law, the same be amended to the extent that there now be judgment in favor of the defendants the Tax Collector and against the plaintiff condemning the latter to pay in addition to the tax to be recovered 10% on that portion thereof with respect to which no reduction of assessment has been obtained in this proceeding.

It is further ordered adjudged and decreed that in all other respects the judgment appealed from be affirmed, the plaintiff to pay the costs of appeal.

Petition to Amend Judgment.

To the Honorable the Chief Justice and Associate Justices of the State of Louisiana:

This the petition of defendants and appellants herein respectfully prays that the judgment herein rendered on Nov. 20th 1905, be so amended as to give and allow the attorney for the Tax Collector herein ten per cent. on the tax on the Twenty Five Hundred Dollars the difference the reduction prayed for and the Four Thousand Dollars reduced assessment which the court granted, the said ten per cent. being the full amount allowed by the statute No. 170 of 1898 Section 57, which provides that "where the party applying for the reduction shall be decreed not entitled to the reduction as claimed by him, the delinquent owing the tax and the party applying for the reduction of the assessment shall pay a commission to said attorney of ten per cent.; calculating the same upon the aggregate amount of taxes and penalties so collected and paid over to the tax collector: Petitioners believe that said omission from the judgment was an oversight on the part of the court in not incorporating the same in the judgment; Petitioners further represent that although

the amount of the ten per cent. on the tax of Twenty Five Hundred Dollars is small amounting to only a few dollars yet petitioners desire that the refusal or omission of the court in this respect
45 shall not serve as a precedent whereby the court can refuse to grant ten per cent. in cases wherein the parties applying for the reduction shall not obtain the whole reduction as claimed by them.

Wherefore the premises considered petitioners respectfully pray that the judgment be so amended as hereinbefore set forth and for all such orders of relief as may be needed herein.

(Signed) F. C. ZACHARIE,
Att'y for Tax Colllector.
(Signed) H. GARLAND DUPRE,
Att'y for City of N. O.
(Signed) GEO. H. TERREBERY,
Att'y for Board of Assessors, all for Defendants, Appellants.

(Endorsed:) No. 15,501. Supreme Court of Louisiana. Metropolitan Life Insurance Co. *vs.* Board of Assessors. Petition for Amendment of Judgment. Filed November 22nd, 1905. (Signed) Paul E. Mortimer, Deputy Clerk.

Petition for Rehearing.

Supreme Court of Louisiana.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS ET AL.

Appeal from the Civil District Court, Parish of Orleans.

The petition of the Metropolitan Life Insurance Company, appellee in the above cause, with respect, shows:

That in the opinion and decree rendered in this cause on the 20th day of November, 1905, there is error to the prejudice of petitioner, and that a rehearing should be granted herein for the following reasons:

First: The Court erred in holding that Section 7 of Act No. 170 of the General Assembly of Louisiana of 1898, sought to be enforced against petitioner herein, was a constitutional act; and erred in holding that said act did not operate to deprive petitioner of its property without due process of law, in violation of the Fourteenth Article of Amendment of the Constitution of the United States.

Second: The Court erred in holding that the enforcement
46 of Section 7 of Act No. 170 of the General Assembly of Louisiana of 1898, sought to be enforced against petitioner herein, was constitutional; and erred in holding that such enforce-

ment did not, and would not operate to deprive petitioner of its property without due process of law, in violation of the Eleventh Article of Amendment of the Constitution of the United States.

Third: The Court erred in holding that the moment petitioner delivered to a Louisiana borrower money agreed to be lent him, such money was "struck" by the tax herein attempted to be levied and to be enforced; and that the moment the note evidencing the debt arising out of said loan was delivered to petitioner, the lender of said money, by the borrower, that such note was "struck" by said tax, and that the subsequent situs and disposition of the note so given was immaterial, for the reason that a tax cannot "strike" property before it is levied; and because even if money so lent, and notes so given, could be "struck" by the tax herein levied in manner as held by the Court, the money lent by petitioner was lent, and the notes received by petitioner were received, long prior to the assessment and levy of the tax herein; and were, at the time of the assessment and levy, out of the State of Louisiana, and could not have been "struck" by, or in any wise affected by said levy.

For the foregoing, and other errors manifest in said opinion and decree, petitioner prays that said decree be vacated and set aside, and that a rehearing be granted herein; and for all general relief.

(Signed) HOWE, SPENCER & COCKE,
Attorney- for Plaintiff, Appellant.

(Endorsed:) No. 15,501. Supreme Court of Louisiana. Metropolitan Life Insurance Company of New York *vs.* Board of Assessors *et al.* Petition for Rehearing. Filed November 24, 1905. (Signed) T. McC. Hyman, Clerk.

47 *Rehearings Refused.*

NEW ORLEANS, TUESDAY, *January* 2, 1906.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors—Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices. By the Court.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

It is ordered that the Rehearings applied for in this case be Refused.

Petition for Writ of Error.

Supreme Court of Louisiana.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
THE BOARD OF ASSESSORS ET AL.

To the Honorable Joseph A. Breaux, Chief Justice of the Supreme Court of Louisiana:

The petition of the Metropolitan Life Insurance Company of New York, plaintiff and appellee in the above entitled and numbered cause, respectfully represents:

That in the above entitled and numbered cause there was drawn in question the validity of a statute of the State of Louisiana, towit,—Sections one and 7 of Act No. 170 of the General Assembly of said State of the year 1898,—and of an authority exercised under said statute, on the ground of their being repugnant to the Constitution and laws of the United States, and especially on the ground of their being repugnant to and violative of the fourteenth Article of Amendment of the said Constitution of the United States; and the decree of this court, rendered herein on the 20 day of November, 1905, which became final on the 2nd day of January, 1906, was in favor of the validity of said statute and of the authority exercised thereunder, and against the right, title, privilege and immunity
48 specially set up and claimed by the petitioner, plaintiff in said cause.

Petitioner is advised that in the said judgment the court erred in the several respects exhibited in the assignment of errors annexed hereto, and that it is entitled to have said judgment as to said questions reviewed by the Supreme Court of the United States on writ of error; and it therefore prays Your Honor to allow said writ of error to remove the said cause to the Supreme Court of the United States, to approve the proper bond and to sign the citation, and all according to law.

(Signed) HOWE, SPENCER & COCKE,
Attorneys for Petitioner.

(Endorsed:) No. 15,501. Supreme Court of Louisiana. Metropolitan Life Insurance Company of New York *versus* The Board of Assessors *et al.* Petition for writ of Error. Filed January 13th, 1906. (Signed) John A. Klotz, Deputy Clerk.

Assignment of Errors.

Supreme Court of Louisiana.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK.
versus
THE BOARD OF ASSESSORS ET AL.

Comes the Metropolitan Life Insurance Company of New York, plantiff and appellee in the above, entitled and numbered cause, and complaining of the judgment and decree herein rendered on the 20 day of November, 1905, which became final on the 2nd day of January, 1906, assigns in the said judgment and decree the following errors:

First: The court erred in holding that Sections one and seven of Act No. 170 of the General Assembly of the State of Louisiana of the year 1898, in so far as the same attempts to authorize the taxation of property of the plaintiff situated, owned and held by it out of the State of Louisiana at the time of the assessment and levy by
49 the defendants herein of the tax herein complained of, and at all times thereafter, was a valid statute; and erred in holding that said statute did not abridge the rights, privileges and immunities of said plaintiff, a citizen of the United States, and did not operate to deprive it of its property without due process of law, and to deny it the equal protection of the laws; all in violation of Section 1 of the fourteenth Article of Amendment of the Constitution of the United States.

Second: The court erred in enforcing by its said judgment said Sections one and seven of Act No 170 of the General Assembly of Louisiana, and in holding that the same operated to authorize the taxation of property of the plaintiff situated, held and owned by it outside of the State of Louisiana and beyond the jurisdiction of said State at the time of the levy and assessment of the tax complained of herein, and at all subsequent times, forasmuch as said statute, as so enforced by the judgment herein, deprived said plaintiff of the privileges and immunities of a citizen of the United States, operated to deprive it of its property without due process of law, and to deny to it the equal protection of the laws; all in violation of Section 1 of the fourteenth Article of Amendment of the Constitution of the United States.

Third: The court erred in holding that said Sections one and seven of Act No. 170 of the General Assembly of the State of Louisiana of the year 1898, as construed, applied, and as sought to be enforced by the defendants, appellants herein, did not abridge the privileges and immunities of the plaintiff as a citizen of the United States, and did not deprive it of its property without due process of law, and deny to it the equal protection of the laws,

and did not contravene Section 1 of the fourteenth Article of Amendment of the Constitution of the United States.

(Signed) HOWE, SPENCER & COCKE,
Att'ys for Plaintiffs.

50 (Endorsed:) No. 15,501. Supreme Court of Louisiana. Metropolitan Life Insurance Company of New York *versus* The Board of Assessors *et al.* Assignment of Errors. Filed January 13th, 1906. (Signed) John A. Klotz, Deputy Clerk.

Order Granting Writ of Error.

Granted without supersedeas upon the plaintiff furnishing bond in the sum of Five hundred Dollars.

New Orleans, January 13, 1906.

(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

Copy of Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Metropolitan Life Insurance Company of New York, plaintiff and the City of New Orleans, the Board of Assessors for the Parish of Orleans, State of Louisiana, and John Fitzpatrick, State Tax Collector First District New Orleans, defendants, said suit being No. 15,501 of the docket of the said Supreme Court of Louisiana, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their
51 being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said the Metropolitan Life Insurance Company of New York, the said plaintiff, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and

full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and here held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court, the Thirteenth day of January, in the year of our Lord one thousand nine hundred and six.

[SEAL.] (Signed) H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by
(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

(Endorsed:) No. 15,501. The Metropolitan Life Insurance Company of New York plaintiff in error, *versus* (Writ of Error) City of New Orleans *et als.* Defendants in error. Copy of a Writ of Error lodged in the Clerk's office of the Supreme Court of
52 Louisiana, in pursuance of the statute in such cases made and provided, the 13th day of January one thousand nine hundred and six. Howe, Spencer & Cocke Attorneys of Plaintiff in error. Filed January 13th, 1906. (Signed) John A. Klotz, Deputy Clerk.

Bond for Writ of Error.

Supreme Court of Louisiana.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK, Plaintiff Appellee,
versus
THE BOARD OF ASSESSORS ET ALS., Defendants and Appellants.

Know all men by these presents, That we, the Metropolitan Life Insurance Company of New York, as principal, and William W. Howe, of the City of New Orleans, as surety, are held and firmly bound unto the City of New Orleans, the Board of Assessors for the Parish of Orleans and John Fitzpatrick, State Tax Collector for the First District of the City of New Orleans, in the full and just sum of Five hundred dollars ($500.00), to be paid to the said obligees and each of them *in solido*, their certain attorneys, executors, administrators, successors and assigns; to which payment,

well and truly to be made, we bind ourselves, our heirs, executors, successors, administrators and assigns, jointly and severally by these presents.

Sealed with our seals and dated this — day of January in the year of our Lord one thousand nine hundred and six.

Whereas lately at a session of the Supreme Court of Louisiana, in a suit depending in said court between the said Metropolitan Life Insurance Company of New York and the said obligees, defendants, entitled "Metropolitan Life Insurance Company of New York *vs.* The Board of Assessors *et als.*" being No. 15,501 of the docket of said Supreme Court of Louisiana, a judgment was rendered against said plaintiff, obligor, which became final January 2nd, 1906, and the said Metropolitan Life Insurance Company of New York, said plaintiff obligor, having obtained a writ of error and filed a copy thereof in the clerk's office of the
53 said Court to reverse the final judgment in the aforesaid suit, and a citation addressed to said obligees, defendants citing and admonishing them to be and appear before the Supreme Court of the United States to be holden at Washington, in the District of Columbia, within thirty days from the date of said citation.

Now, therefore, the condition of the above obligation is such that if the said Metropolitan Life Insurance Company of New York shall prosecute its writ of error to effect and answer all costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK,

(Signed) By HOWE, SPENCER & COCKE,
Its Attorneys.

(Signed) W. W. HOWE, *Surety.*

Sealed with our seals and delivered in the presence of

(Signed) CHAS. J. SMITH.

Witness

(Signed) J. G. PRIETO.

STATE OF LOUISIANA, *Parish of Orleans, ss:*

Before me, the undersigned Notary Public in and for the Parish of Orleans, State of Louisiana, personally came and appeared William W. Howe, who being duly sworn, deposes and says: I am the owner of real estate in the City of New Orleans, and am worth, over and above all my just debts, and property exempt by law from execution the sum of one thousand dollars.

(Signed) W. W. HOWE.

Sworn to and subscribed before me this 13th day of January 1906.

[SEAL.] (Signed) CHARLES J. DENECHAUD,
Notary Public.

Approved.

(Signed) JOSEPH A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

54 (Endorsed:) No. 15,501. Supreme Court of Louisiana. Metropolitan Life Insurance Company of New York, Plaintiff in error *vs.* The Board of Assessors, *et als.* Defendants in error. Bond for writ of error. Filed January 13th, 1906. (Signed) John A. Klotz, Deputy Clerk.

Clerk's Certificate.

UNITED STATES OF AMERICA, *State of Louisiana:*

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the Supreme Court of the State of Louisiana, do hereby certify that the above and foregoing fifty three pages contain a full, true and complete copy of the proceedings had in the Civil District Court for the parish of Orleans, in a certain suit wherein the Metropolitan Life Insurance Company of New York were plaintiffs, and the Board of Assessors and others were defendants, and also of all the proceedings had in this Supreme Court on the appeal taken by said plaintiffs, which appeal is now on the files thereof, under No. 15,501.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court at the city of New Orleans, this Twenty-fifth day of January, *Anno Domini*, one thousand nine hundred and six, and in the one hundred and thirtieth year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, *Clerk.*

55 *Certificate of the Chief Justice.*

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is Clerk of the Supreme Court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of his said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal at the city of New Orleans, this the Twenty-fifth day of January, A. D., one thousand nine hundred and six.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice.

56 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Metropolitan Life Insurance Company, of New York, plaintiff, and the City of New Orleans the Board of Assessors for the Parish of Orleans, State of Louisiana, and John Fitzpatrick, State Tax Collector First District, New Orleans, defendants, said suit being No. 15,501, of the docket of said Supreme Court of Louisiana, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of,
57 or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said the Metropolitan Life Insurance Company, of New York, the said plaintiff, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the

said Supreme Court, the thirteenth day of January, in the year of our Lord one thousand nine hundred and six.

[Seal Circuit Court for the 5th Circuit & Eastern District of La.]

H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by
JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

58 [Endorsed:] No. 15,501 Supreme Court of Louisiana Metropolitan Life Insurance Company of New York, plaintiff in error *versus* The Board of Assessors *et al.*, defendants in error Writ of Error. Filed Jan'y 13-1906 John A. Klotz Deputy Clerk

59 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the City of New Orleans, the Board of Assessors, Parish of Orleans, and John Fitzpatrick, State Tax Collector First District, New Orleans, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein The Metropolitan Life Insurance Company of New York is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of he United States, this 13th day of January in the year of our Lord one thousand nine hundred and six.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

Service Accepted.
F. C. ZACHARIE,
Att'y for Tax Coll'r, Def't.
H. G. DUPRE,
Ass't City Att'y for City of New Orleans.
GEO. H. TERRIBERRY,
Att'y B'rd of State Assessors, P'h of Orleans.

60 [Endorsed:] Supreme Court of the State of Louisiana. No. 15501. Metropolitan Life Insurance Co. of New York plaintiff in error *vs.* Board of Assessors *et als.* defendants in error Citation. Sheriff's return. Filed Jan'y 13, 1906 Jan'y 13-1906 John A. Klotz Deputy Clerk.

Endorsed on cover: File No. 20,085. Louisiana supreme court. Term No. 199. Metropolitan Life Insurance Company of New York, plaintiff in error, vs. The City of New Orleans, The Board of Assessors for the Parish of Orleans, and John Fitzpatrick, state tax collector, &c. Filed February 5th, 1906. File No. 20,085.